

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 35181 of 2007(S)

OP.398/2003 of FAMILY COURT, MALAPPURAM
.....

PETITIONER:

M.K. KUNHAHAMMED, S/O. ABDULLAKUTTY,
MULLAKALAM, KUMMINIPARAMBA, MALAPPURAM DISTRICT,
KUMMINIPARAMBA, MALAPPURAM DISTRICT THROUGH THE
POWER OF ATTORNEY HOLDER, ABDUL RAZAK,
S/O. MUHAMMED, MELEPALLIYALI HOUSE, KUMMINIPARAMBA,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

AYYANARI AMINA, D/O. KOYAKUTTY,
UNNEKKAL HOUSE, THENHIPALAM, MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P.C.No.35181 of 2007

Dated this the 28th day of November, 2007

JUDGMENT

Kurian Joseph,J.

Petitioner is aggrieved by Ext.P3 order passed by the Family Court, Malappuram in I.A.Nos.1490/2007 and 1491/2007 in O.P.No.398/2003. The petitions were filed for condoning the delay in filing the petition for setting aside the ex parte order and for setting aside the ex parte order. Petitioner herein is the respondent in the original petition. Admittedly the service was complete by publication. The contention is that he could not go over to India. But he could have made some arrangements in which case the Family Court could have taken note of the inability of the petitioner. Be that as it may, now the Family Court has allowed the petition on condition that the petitioner pays the entire maintenance to the respondent and also pays 30% of the decreed amount. Since the ex parte decree is being set aside, we do not find any justification in directing the petitioner to deposit a portion of the decree amount. Of course, the Family Court will be

free to insist on furnishing of security to the satisfaction of the said Court either for 30% or for the full amount. We do not think it necessary to issue notice to the respondent since we propose to relegate the petitioner to approach the Family Court itself in the light of the observation as above.

Therefore, we dispose of the writ petition making it clear that in the event of the petitioner approaching the Family Court for modification of the order Ext.P3 with regard to the deposit of 30% of the decree amount and in case the petitioner is prepared to furnish security for the said amount or any amount as ordered by the said Court, the Family Court shall pass orders in that regard in the light of the observations in this judgment, since the interest of the respondent is otherwise safeguarded by the security furnished by the petitioner. It is made clear that the petitioner shall, however, pay the arrears of maintenance before filing the petition.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.

**KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.**

W.PC.No.35181 of 2007

JUDGMENT

28th November, 2007